

Message Text

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ACTION EUR-25

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AMEMBASSY PARIS

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USCINCEUR VAIHINGEN

C O N F I D E N T I A L MADRID 4601

E.O. 11652: GDS

TAGS: PINT, SP

SUBJ: PRINCE JUAN CARLOS ASSUMES HEADSHIP
OF STATE

REF: MADRID 4585 (NOTAL)

1. GOS OFFICIAL MEDIA HAVE ANNOUNCED THAT PRINCE JUAN
CARLOS HAS ASSUMED HEADSHIP OF STATE IN CONFORMITY WITH
ARTICLE 11 OF ORGANIC LAW OF 1967 THIS ARTICLE SAYS:
"DURING THE ABSENCE OF THE HEAD OF STATE FROM THE
NATIONAL TERRITORY, OR IN CASE OF ILL HEALTH, HIS
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FUNCTIONS SHALL BE ASSUMED BY THE HEIR TO THE CROWN,

SHOULD THERE BE ONE AND SHOULD HE BE OVER THIRTY YEARS OF AGE, OR IN DEFAULT THEREOF, BY THE REGENCY COUNCIL. IN ANY CASE, THE PRESIDENT OF THE GOVERNMENT SHALL GIVE AN ACCOUNT TO THE CORTES." ANNOUNCEMENT WAS MADE AT SAME TIME AS LATEST MEDICAL BULLETIN ON WORSENING OF FRANCO'S PHYSICAL CONDITION (REFTEL).

2. A LAW ON THE HEADSHIP OF STATE PROMULGATED JULY 15, 1971 PROVIDED THAT "THE FUNCTIONS WHICH ARTICLE 11 OF THE ORGANIC LAW OF THE STATE CONFER ON THE HEIR TO THE CROWN REFER TO THE PRINCE OF SPAIN, DON JUAN CARLOS DE BORBON Y BORBON, SUCCESSOR WITH THE TITLE OF KING IN THE HEADSHIP OF STATE." THIS LAW CLARIFIED THE ISSUE OF WHO WAS THE HEIR TO THE CROWN AND WAS CONSISTENT WITH THE DESIGNATION OF JUAN CARLOS AS FUTURE HEAD OF STATE ON JULY 23, 1969.

3. THE TWO FOREGOING LAWS PROVIDE THE CONSTITUTIONAL BASIS FOR THE TRANSFER OF FUNCTIONS IN THE CASE OF INCAPACITY OF THE HEAD OF STATE. NEITHER THE ORGANIC LAW OR THE 1971 LAW, HOWEVER, SAY ANYTHING ABOUT WHO DECIDES ON THE INCAPACITY OF THE HEAD OF STATE. THE ONLY CONSTITUTIONAL PROVISION WHICH COVERS THIS ASPECT OF THE ISSUE OF INCAPACITY IS ARTICLE 34 OF THE LAW OF SUCCESSION OF THE HEADSHIP OF STATE. IT SAYS: "THE INCAPACITY OF THE HEAD OF STATE, RECOGNIZED BY A TWO-THIRDS MAJORITY OF THE MEMBERS OF THE GOVERNMENT SHALL BE COMMUNICATED IN A DETAILED REPORT TO THE COUNCIL OF THE REALM. IF THIS COUNCIL, BY THE SAME MAJORITY, SHOULD AGREE ON THIS POINT, THE PRESIDENT OF THE COUNCIL OF THE REALM SHALL SUBMIT THE MATTER TO THE CORTES, WHICH, AT A SESSION CALLED WITHIN THE FOLLOWING EIGHT DAYS, SHALL ADOPT THE ENSUING RESOLUTION."

4. OFFICIAL ANNOUNCEMENT OF ASSUMPTION OF FUNCTIONS BY JUAN CARLOS STATES THAT FRANCO HIMSELF, IN COLLABORATION WITH ARIAS NAVARRO, TOOK INITIATIVE TO PROVIDE FOR "TEMPORARY AND REVOCABLE" ASSUMPTION OF HIS POWERS BY PRINCE OF SPAIN. TEMPORARY AND REVOCABLE CHARACTER OF ACTION WAS MENTIONED SEVERAL TIMES IN ANNOUNCEMENT. IT CONFIDENTIAL

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SHOULD BE NOTED THAT ARTICLE 11 OF ORGANIC LAW, LAW OF 1971, AND ARTICLE 14 OF LAW OF SUCCESSION DO NOT MENTION TEMPORARY OR REVOCABLE CHARACTER OF POWERS ASSUMED BY HEIR TO CROWN.

6. COMMENT: PRINCE JUAN CARLOS WILL NOW HAVE OPPORTUNITY TO PLAY KEY ROLE IN SPANISH POLITICAL LIFE, ALBEIT IN FRANCO'S SHADOW. ONE HIGHLY RESPECTED COMMENTATOR

(EMILIO ROMERO) WARNED HOWEVER TWO DAYS AGO AGAINST TEMPORARY TRANSFER OF POWERS TO PRINCE WHO WOULD RUN RISK OF WASTING WHAT POLITICAL AUTHORITY HE HAD IN A TRIAL-RUN WITHOUT HAVING FRANCO'S FULL POWERS, CONSTITUTIONALLY DESTINED TO CEASE WITH HIS DEATH, NOR FULL ROYAL PREROGATIVES WHICH HE CAN ONLY RECEIVE WHEN HE TAKES OATH AS KING. IN PRESENT SITUATION, JUAN CARLOS WILL REMAIN THE PRINCE OF SPAIN, YET BE ENDOWED WITH FUNCTIONS OF HEAD OF STATE. FRANCO MAY POSSIBLY HAVE HAD RECOURSE TO HIS OWN SPECIAL POWERS UNDER A 1938 LAW AND A 1939 LAW, WHICH ARE TRANSITORY PROVISIONS OF THE ORGANIC LAW AND CEASE WITH HIS DEATH, TO ARRANGE FOR "TEMPORARY AND REVOCABLE" TRANSFER OF FUNCTIONS. THIS PROCEDURE WOULD ENABLE HIM TO REASSUME THESE FUNCTIONS AT WILL. ON THE OTHER HAND, OFFICIAL ANNOUNCEMENT SPECIFICALLY MENTIONS ARTICLE 11 OF THE ORGANIC LAW WHICH HAS EFFECT OF NARROWING CONSTITUTIONAL FLEXIBILITY IN ARRANGING FOR "TEMPORARY AND REVOCABLE" TRANSFER OF FUNCTIONS OF CHIEF OF STATE. THIS AND OTHER FACETS OF PRESENT SITUATION COULD LEAD TO PUBLIC DISCUSSION ON CONSTITUTIONAL ISSUES, POSSIBLY EVEN POLARIZATION OF OPINION BETWEEN SUPPORTERS OF DEFINITIVE TRANSFER OF POWERS TO PRINCE AND SUPPORTERS OF FRANCO'S REASSUMPTION OF FULL FUNCTIONS.

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